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SK
Ct. No. 18
16.04.2021

(Via Video Conference)
C.O. No. 471 of 2021

Madhabi Mukherjee & Ors.
Vs.
Puspa Dubey & Ors.

Mr. Dipayan Kundu ... For the petitioners.

Mr. Om Narayan Rai,
Mr. Badal Singh ... For the opposite parties.

Affidavit of service filed on behalf of the petitioners today be kept with the record.

The petitioners were the plaintiffs of the Ejectment Suit No. 510 of 1984 which was dismissed by the learned Trial Judge.

However, in appeal the judgment of the Trial Judge was reversed and the suit was decreed. The appellate decree is under challenge in a Second appeal at the instance of the opposite parties.

The further proceeding of the execution case levied to execute the appellate decree has been stayed by an order passed in the said Second appeal subject to compliance of some conditions, mentioned in the said order.

The petitioners in the said execution case filed an application praying for reopening of the further proceeding of the said execution case alleging that the opposite parties have defaulted in complying the said conditions for stay.

The executing Court by the order impugned being Order No. 65 dated November 17, 2020 has dismissed the said application holding that the default complained of can be condoned considering the prevailing Covid-19 pandemic.

The petitioners complain that there were pre-Covid-19 Pandemic defaults.

It appears that at paragraph 4 of the said application the petitioners have alleged series of defaults in deposit of the occupational charges commencing from November 2011.

The executing Court since has not considered all the defaults alleged, the application needs to be reconsidered.

The order impugned is therefore set aside with a direction upon the learned Judge, 3rd Bench, Presidency Small Causes Court at Calcutta, where the connected execution case being Ejectment Execution Case No. 83 of 2009 is pending, to decide the said application afresh in accordance with law.

C.O. 471 of 2021 is thus disposed of without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)